

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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In the Matter of )  
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Implementation of Section 309(j)  
of the Communications Act  
Competitive Bidding  
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PP Docket No. 93-253

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**COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.**

Vanguard Cellular Systems, Inc. ("Vanguard") hereby submits comments regarding reconsideration of certain rules for licensing broadband personal communications services ("PCS"), adopted in the Commission's Fifth Report and Order in the above-captioned proceeding, FCC 94-178 (Released July 15, 1994) ("Fifth Report and Order").<sup>1/</sup> Vanguard is a wireless communications service provider that qualifies under the rules adopted in the Fifth Report and Order (the "Broadband Auction Rules") to bid in the entrepreneurs' frequency blocks for broadband PCS licenses. See Fifth Report and Order at 69 and Appendix B at 5 (Final Rule Section 24.709). As discussed more particularly below, Vanguard requests that the Commission (i) modify the Broadband Auction Rules to afford entrepreneurs with more than \$75 million in gross revenues to pay winning bids in installments for all BTAs, and (ii) clarify the period over which gross revenues will be used to determine eligibility to bid for entrepreneurs' blocks in the broadband PCS auction.

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1. See Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings, 59 Fed. Reg. 43,838 (1994).

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## DISCUSSION

### **I. INSTALLMENT PAYMENT OF BIDS BY ENTREPRENEURIAL BUSINESSES**

Vanguard requests that the Commission eliminate provisions in the Broadband Auction Rules that restrict payment of winning bids in installments by entrepreneurial bidders with over \$75 million in gross revenues to the top fifty Basic Trading Areas ("BTAs"). See Fifth Report and Order at 61 and Appendix B at 7 (Final Rule Section 24.711(a)). Section 24.711(a) will have the effect of severely restricting the ability of relatively small entrepreneurial companies to provide broadband PCS in the very markets they are best suited to serve.

As the Commission has recognized, "[a] significant barrier for most businesses small enough to qualify to bid in the entrepreneurs' blocks will be access to adequate private financing to ensure their ability to compete against larger firms in the PCS marketplace." Fifth Report and Order at 60. Such financing will be needed not only for entrepreneurial companies to pay winning bids, which are themselves likely to be substantially higher than projected at the time the Broadband Auction Rules were adopted,<sup>2/</sup> but also to construct and commence commercial operation of PCS facilities. The Commission notes that it "expect[s] broadband PCS to be a highly capital intensive business requiring bidders to expend tens of millions of dollars to acquire a license and construct a system even in the smaller broadband PCS markets." Fifth Report and Order at 77 (emphasis added).

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2. See, e.g., Bidding Frenzied for IVDS Licenses, With Prices 2-4 Times Expectations, Communications Daily, July 29, 1994; Narrowband PCS Bidding Expected To Continue Today, Value Nears \$500 Million, Communications Daily, July 28, 1994.

To account for the obvious disparity in the abilities of small and large enterprises to finance licensing and startup of PCS businesses, the Commission adopted measures to "level the playing field." These include setting aside the entrepreneurs' blocks, allowing entrepreneur businesses to pay down payments in two increments, and allowing them to pay winning bids in installments, with interest only to be paid for the first year. See Fifth Report and Order at 53-58, 60-62 and Appendix B at 5-6 (Final Rule Section 24.709), 7-9 (Final Rule Section 24.711). Vanguard strongly supports the Commission's decision to adopt these methods to open the PCS marketplace to firms that would otherwise be unable to compete with large, heavily financed telecommunications companies. However, by then eliminating installment payments for entrepreneurial businesses with greater than \$75 million in gross revenues in all but the top fifty BTAs, the Commission ignores both the realities of the marketplace and the sound logic underlying its support for entrepreneur participation in broadband PCS.

The Commission bases its decision to extend installment payment benefits only to companies with less than \$75 million in revenues in all but the very largest BTAs on "the expected lower costs to acquire licenses and construct systems in the smaller BTAs." Fifth Report and Order at 61. The Commission offers no reasoned analysis for its decision to set \$75 million in revenue as the benchmark for installment payment in small markets. While the costs of implementing broadband PCS in smaller markets will be less than in large ones, they will by no means be insubstantial. A typical company having \$75 to \$125 million in gross revenues is no more able to obtain on short notice the millions of dollars needed to bid for and construct a successful PCS operation in a small market than in a large one. Such a

company will still be required to obtain new financing to support such an undertaking, and that will take time. Sources of financing typically used by such companies often will not make funds available until the bidder has already demonstrated that it has the necessary authority to proceed with the proposed business. The installment payment approach helps serious entrepreneurs obtain the financing needed to bid competitively in the auction.

The effect of limiting participation of entrepreneur businesses in the auction for smaller BTAs will be to deny the companies best-suited to successfully establish broadband PCS in those markets. Many of the potential bidders for the entrepreneurs' blocks are small companies that have had success in providing other wireless services to areas where the largest companies do not ordinarily venture, such as rural cellular markets. These companies have acquired significant expertise in serving smaller markets, and their participation will greatly enhance the likelihood of success of broadband PCS. Section 24.711(a) turns the notion of entrepreneurial participation on its head, by discouraging many companies that are ideally suited to provide service in smaller markets from bidding aggressively for those licenses.

Vanguard does not agree that the need to create a third size category for entrepreneurial bidders, that is, those with between \$40 and \$75 million in gross revenues, is supported by the record. However, should the Commission deem it necessary to do so, it is possible to afford that group favorable treatment in auctions for smaller BTAs, without taking the drastic step of entirely eliminating installment payments for companies with more than \$75 million in revenues. For example, the Commission could reduce the total term of the payment from ten years to eight years. An eight year term would correspond to the

length of typical commercial lending instruments for mid-sized telecommunications companies that provide wireless services.

## **II. TIMEFRAME FOR DETERMINING ENTREPRENEURIAL ELIGIBILITY**

Under the Broadband Auction Rules, eligibility to bid for entrepreneurs' block licenses will be determined based on "gross revenues of less than \$125 million in each of the last two years." Fifth Report and Order at 69. See also Id., Appendix B at 5 (Final Rule Section 24.709(a)(1)). This language is ambiguous and needs to be clarified. The dates that the broadband PCS auctions will take place are not yet known, and thus the timeframe over which revenues are to be measured cannot be determined. This results in uncertainty concerning eligibility, which will affect all prospective designated entities, because they all must satisfy one of the gross revenue tests. This uncertainty is particularly debilitating at a time when they may be formulating bidding strategy or engaged in discussions with possible bidding partners or financing sources. Further, the uncertainty also could result in a bidder being eligible to bid in the entrepreneurs' blocks during part of the auction, and then becoming ineligible or falling into a different category during subsequent bidding rounds.

To eliminate questions regarding eligibility of prospective bidders, Vanguard requests that the Commission adopt the proposal of the Cellular Telecommunications Industry Association that gross revenues for this purpose be determined over the two years preceding September 23, 1993, the date of the order governing regulation of PCS.<sup>3/</sup>

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3. See Petition for Reconsideration of the Cellular Telecommunications Industry Association, filed August 22, 1994; New Personal Communications Services, Second report and Order, 8 FCC Rcd. 7700 (1993).

### CONCLUSION

Because entrepreneurs earning more than \$75 million annually will still be required to pay millions of dollars to acquire broadband PCS licenses, build new facilities and implement commercial operations in smaller BTAs, Section 24.711(a) severely restricts their ability to participate in the auction for those markets by eliminating installment payments. Vanguard respectfully requests that the Commission adopt a modification to the Broadband Auction Rules that extends installment payment rights to all entrepreneurial bidders for all BTAs. Further, Vanguard requests that the Commission provide needed certainty regarding eligibility to bid for the entrepreneurs' blocks by establishing September 23, 1993 as the cutoff date for annual gross revenue determination.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

By: 

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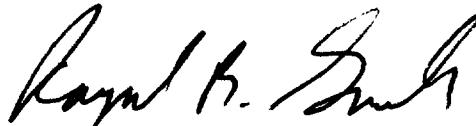
September 9, 1994

CERTIFICATE OF SERVICE

I, Raymond B. Grochowski, hereby certify that the foregoing Comments of Vanguard Cellular Systems, Inc. was served this 9th day of September, 1994, by first class mail, on the following:

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